

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

) CASE NO: 23-34815-jpn  
)  
) Houston, Texas  
)  
GALLERIA 2425 OWNER, LLC. )  
Debtor. ) Friday, April 5, 2024  
)  
) 9:00 AM to 10:16 AM  
-----)

TRIAL

BEFORE THE HONORABLE JEFFREY P. NORMAN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the City of Houston, JEANNIE LEE ANDRESEN  
et al.: Linebarger Goggan Blair & Sampson  
LLP  
P.O. Box 3064  
Houston, TX 77253

For Galleria 2425 REESE W. BAKER  
Owner LLC: JACK ROSE  
Baker & Associates  
950 Echo Lane, Suite 300  
Houston, TX 77024

For Christopher R. R.J. SHANNON  
Murray: Shannon & Lee LLP  
2100 Travis Street, Suite 1525  
Houston, TX 77002

For 2425 West Loop LLC: ROBERT MACNAUGHTON  
Porter & Powers PLLC  
5900 Memorial Drive, Suite 305  
Houston, TX 77027

STEPHEN WAYNE SATHER  
Barron Newburger PC  
7320 N Mopac Expressway, Suite 400  
Austin, TX 78731

1 For the National Bank PATRICK FITZMAURICE  
2 of Kuwait, SAKP, New Pillsbury Winthrop Shaw  
3 York Branch: Pittman LLP  
4 609 Main, Suite 2000  
Houston, TX 77002  
713.276.7639  
5  
6 Court Reporter: TRACEY CONRAD  
7  
8 Courtroom Deputy: TRACEY CONRAD  
9  
10 Transcribed by: Veritext Legal Solutions  
11 330 Old Country Road, Suite 300  
Mineola, NY 11501  
Tel: 800-727-6396  
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1                   HOUSTON, TEXAS; FRIDAY, APRIL 5, 2024; 9:00 AM

2                   (Call to Order)

3                   THE COURT: Good morning. It's 9 a.m. and we're  
4 on the record for April 5, 2024, initial matters scheduled  
5 for 9 a.m. That is the case of Galleria 2425 Owner, LLC,  
6 Case No. 23-34815. Appearances of counsel, please.

7                   MR. SHANNON: Good morning, Your Honor. Good  
8 morning, Your Honor. R.J. Shannon on behalf of the Trustee,  
9 Christopher Murray. I see my partner, Kyung Lee, is also on  
10 the line and on the video. And Mr. Murray I see is on video  
11 and I believe on the telephone.

12                  THE COURT: Yes. Thank you, sir.

13                  MR. BAKER: Your Honor, Reese Baker, on behalf of  
14 Galleria 2425 Owner.

15                  MR. ROSE: Good morning, Your Honor. Jack Rose on  
16 behalf of 2225 WL, LLC.

17                  MR. FITZMAURICE: Good morning, Your Honor.  
18 Patrick Fitzmaurice from Pillsbury --

19                  THE COURT: Oh, hold on one second. Mr. Rose, I  
20 don't see you on the screen anywhere.

21                  MR. ROSE: I'm next to Mr. Baker over here, Your  
22 Honor.

23                  THE COURT: Okay. All right. I apologize. I  
24 didn't see you in the background. All right, so ahead.  
25 Who's next?

1 MR. FITZMAURICE: Thank you, Your Honor. Patrick  
2 Fitzmaurice from Pillsbury for National Bank of Kuwait, the  
3 Debtors seeking secured creditor. With me are my partners,  
4 Charles Conrad, Andrew Troop and (indiscernible)

5 THE COURT: Thank you.

6 MR. SATHER: Your Honor, Stephen --

7 MS. ANDRESEN: Good morning --

8 MR. SATHER: Go ahead.

9 MS. ANDRESEN: Lee Andresen for City of Houston --  
10 Houston Community College and the ISD.

11 THE COURT: Thank you, Ms. Andresen.

12 MR. SATHER: Stephen Sather, appearing for 2425  
13 WL, LLC.

14 MR. MACNAUGHTON: Robert MacNaughton --

15 THE COURT: All right --

16 MR. MACNAUGHTON: Sorry, Your Honor. Robert  
17 MacNaughton for 2425 West Loop, LLC, as Tenant.

18 THE COURT: All right. Mr. MacNaughton, I don't  
19 see you on the screen here.

20 MR. MACNAUGHTON: I'm on -- okay, I don't know how  
21 to turn the camera on.

22 THE COURT: Well, we could figure that out. We've  
23 been doing this for a long time, and I'm always confused by  
24 lawyers who don't know to turn on a camera. All right.  
25 I'll go -- let me go to Mr. Shannon first. It's your

1 Motion. There's been quite a bit of activity in the case,  
2 which I've read. So, why don't you give me a status of  
3 where we are and then we'll go from there?

4 MR. SHANNON: Yes, Your Honor, and actually we're  
5 here on two Motions today. We're here on the Final Hearing  
6 of the Trustee's Cash Collateral Motion that's at ECF 133.  
7 And then at the Interim Hearing, you also set forth a Stay  
8 of Trustee's Motion for the Order (indiscernible) to the  
9 agreement with (indiscernible) and that's at ECF No. 145.  
10 So, with that, Judge, I'll pull up the cash collateral  
11 first. There's going to be -- the Trustee's Motion was  
12 filed at Docket No. 133. We had an Interim Hearing on, I  
13 believe, March 22nd, and there were three objections filed  
14 to the Trust including, the taxing authorities at ECF 134,  
15 there was 2425 WL, LLC at Docket No. 167. Debtor also filed  
16 an Objection at ECF No. 168. There were two replies that  
17 were filed in this Court. The Trustee's side  
18 (indiscernible) ECF 177. The National Bank of Kuwait filed  
19 theirs in response to the objections. We would call that a  
20 reply (indiscernible) 178.

21 Since all that's been going on, Judge, there has  
22 significantly reduced (indiscernible) the disputes. The  
23 Trustee filed a Notice of Revised Proposed Order at ECF No.  
24 172. I noted that redline it had a revised Proposed Order  
25 that related to cash collateral. (indiscernible) resolve

1 the taxing authority's objection that the language regarding  
2 the taxing authority was negotiated with them. They agreed  
3 to it, National Bank of Kuwait agreed to it and no one at  
4 this point that I know of, objected to that language. It  
5 also resolved some, but not all, of the Debtor's objection  
6 in 2425 (indiscernible) objection. But there are some  
7 issues that remain (indiscernible) live dispute, so it was a  
8 revised proposed Order that the Debtor and 2325 WL filed  
9 yesterday at ECF No. 179. And there's only -- it's to the  
10 (indiscernible) filing date (indiscernible) redline. It  
11 reflects the changes that were in the Trustee's revised  
12 proposed Order and the additional language that the Debtors  
13 of 2425 WL say are necessary.

14 That additional language is still disputed and  
15 this morning, I filed -- just to be clear, (indiscernible)  
16 was the dispute one. I filed a (indiscernible) just  
17 breaking out the most particular changes that, as far as I  
18 can tell, are disputed and that would be ECF No. 182 that  
19 clarifies this (indiscernible) the Trustee and the -- the  
20 cash collateral motion submitted to the Agreement with JLL.  
21 As far as I'm concerned, there is no remaining dispute and  
22 if it makes sense to the Court (indiscernible) the other  
23 parties divisions of what I just said before we go into any  
24 matter of arguments. And assuming there is no disputes with  
25 JLL's Agreement Motion, we'd go forward with that one first

1 because there is no dispute (indiscernible).

2 THE COURT: All right, Mr. Shannon, I looked at  
3 182 and there's blue-line and red-line. Do you want to  
4 explain the blue-line and the red-line to me in 182?

5 MR. SHANNON: Yes, Judge. So, the blue ones are  
6 just the additions. So, they should be blue and underlined.  
7 So, this is the language that the Debtor and 2425 WL, LLC  
8 wanted to add to the Sub-C proposed Order. And the red,  
9 that's the strike language.

10 THE COURT: Okay, and you're opposed to the  
11 addition of that language, correct, and striking that?

12 MR. SHANNON: Yes. That's right. I can explain  
13 now why, if you want, but it could be --

14 THE COURT: Well, let me hear from the other  
15 parties so I can (indiscernible) and then I'll go back. I  
16 just wanted to understand what that exhibit was. And I'll  
17 go first to Mr. Baker.

18 MR. BAKER: Your Honor, the Exhibit in blue sets  
19 were the provisions that we believe we added to strike out  
20 in red. There's nothing demonstrating any value at this  
21 point in time, so we believe the blue provisions should be  
22 added to the Order. And Mr. Rose may have some other  
23 comments, too.

24 THE COURT: So, but bear with me for one second.  
25 Okay, so you want to add the blue language and then you want



1 to strike the red language. Am I correct in that?

2 MR. BAKER: Yes.

3 THE COURT: All right. So, let me go around the  
4 horn. I'll come back to you, Mr. Rose, in just a second.  
5 Thank you. Let me know now, Mr. Sather?

6 MR. BAKER: Thank you, Your Honor. Mr. Rose will  
7 be arguing on behalf of my client, 2425 WL. I'm going to  
8 agree with the proposed Order that was uploaded by our side.

9 THE COURT: All right. So, I'm going to let Mr.  
10 Rose speak for you and basically, at this point in time, not  
11 come back to you. So, thank you so much. All right, so Mr.  
12 Rose, now that I know that Mr. Baker is not going to say  
13 anything, please tell me what you think.

14 MR. ROSE: I -- Your Honor, we agree with Mr.  
15 Baker as to the language and confirm agreement with  
16 (indiscernible).

17 THE COURT: All right. Thank you. Then, let me  
18 go now to Ms. Andresen, it's the Order that Mr. Shannon said  
19 would absolve your objections?

20 MS. ANDRESEN: (indiscernible) and I can withdraw  
21 our objection.

22 THE COURT: And just so the record is clear,  
23 that's ECF 172?

24 MS. ANDRESEN: I reviewed that. I also reviewed -  
25 - there was a more recent revised proposed/Final Order filed

1 at 179. We don't have it (indiscernible).

2 THE COURT: That's the Debtor's version, I think.  
3 If I remember correctly.

4 MS. ANDRESEN: Right. We reviewed both and there  
5 is no objection to either order.

6 THE COURT: All right. So, let me go to Mr.  
7 Fitzmaurice.

8 MR. FITZMAURICE: Thank you, Your Honor. We do  
9 oppose the addition to the blue and the strike out in red,  
10 referring to the demonstrative exhibit at ECF 182.

11 THE COURT: All right. Mr. MacNaughton?

12 MR. MACNAUGHTON: Yes, Your Honor. Referring to  
13 Exhibit 182, we agree and have no problems with the Order  
14 except for one suggestion and Section 3A(ii), the quote  
15 adding the language that says, "So long as it is stated in  
16 the adversary proceedings", we believe it should say  
17 "current adversary proceedings". We don't want to see  
18 additional adversary proceedings added and added and added  
19 so there's never a sale.

20 THE COURT: And again, sir, so I can write that  
21 down, that's what paragraph?

22 MR. MACNAUGHTON: It's 3C(ii), the blue line  
23 addition to it on the Trustee's added (indiscernible).

24 THE COURT: So, the blue language has further  
25 provided nothing here and shall affect the rights to the

1 parties in the adversary or if they turn adversary?

2 MR. MACNAUGHTON: Yes, Your Honor.

3 THE COURT: All right. That's fine. That tells  
4 me what I needed to know. All right. Now, I think that's  
5 everyone. Mr. Shannon, I don't think I missed everyone.  
6 So, do you want to go ahead and argue and then present any  
7 evidence? Or whatever you want to do relative to the  
8 contested language.

9 MR. SHANNON: You know, Judge, I think it makes  
10 sense to talk about the JLL Agreement Motion first since  
11 that (indiscernible) the objection to that.

12 THE COURT: I'm sorry. You went in and out. I  
13 didn't think I understood what you said.

14 MR. SHANNON: Apologies, Judge. The answer to  
15 that is yes, but I think it makes sense to talk about the  
16 JLL Agreement Motion at ECF 145 first.

17 THE COURT: All right.

18 MR. SHANNON: And I just don't believe --

19 THE COURT: Go ahead.

20 MR. SHANNON: I don't believe there's any  
21 objection to that. So, it would appear, Judge, that the  
22 Trustee filed the JLL Agreement Motion at Docket 145. They  
23 checked out the reasons why the Trustee needs to engage JLL  
24 as the property manager. It very clearly exercised that the  
25 Trustee didn't use judgment on who he desires to have be the

1 property manager. The Trustee is not seeking to  
2 (indiscernible) in a professional (indiscernible), is not  
3 seeking to retain JLL of the professional (indiscernible)  
4 day-to-day management of the property, including the  
5 Trustee's control (indiscernible) professional judgment  
6 related to the Chapter 11 case. And (indiscernible)  
7 objection to that Motion and so, the Trust would ask the  
8 Court to enter the proposed Order at 145-2. And, Judge,  
9 we'd be happy to address that.

10 THE COURT: Let me go on the horn and see if there  
11 are any objections to them and I'll start again, with Mr.  
12 Baker. Any objections to the Order at 145-2?

13 MR. BAKER: No, Your Honor. We don't have an  
14 objection as far as the Agreement remain on the cash  
15 collateral.

16 THE COURT: All right, Mr. Rose, I'll go to you.  
17 Do you have any objections?

18 MR. ROSE: We have no objections, Your Honor.

19 THE COURT: Ms. Andresen?

20 MS. ANDRESEN: No objection, Your Honor.

21 THE COURT: Mr. Rose? (indiscernible) Mr. Rose.  
22 How are you? See, Mr. Fitzmaurice?

23 MR. FITZMAURICE: No objection, Your Honor.

24 THE COURT: And Mr. MacNaughton?

25 MR. MACNAUGHTON: No objection.

1                   THE COURT: All right. Then I will grant ECF No.  
2   145, which is the Motion for Entry of the Order as to  
3   Property Manager and Final Order at 145-2, since we are  
4   concluded with the hearings today. All right, Mr. Shannon,  
5   we're back at collateral.

6                   MR. SHANNON: All right. Thank you, Your Honor.  
7   Again, the Motion was filed at Docket No. 133. And  
8   ultimately, since there was no dispute from any party that  
9   the Trustee (indiscernible) to use the cash to preserve the  
10   value of this estate, there's not anything that today the  
11   National Bank of Kuwait had the first priority lien  
12   (indiscernible) about (indiscernible) potential for  
13   (indiscernible) assertion that maybe that being or maybe his  
14   claim should be (indiscernible). That puts (indiscernible).  
15   There might be claims that (indiscernible). But as was  
16   stated (indiscernible). In terms to the language at issue,  
17   as (indiscernible), I just want to say, obviously the  
18   Trustee, in an ideal world (indiscernible). It would be  
19   great to have no stipulations, to have NBK just agree that  
20   the Trustee can use its cash collateral without any  
21   conditions, without anything back (indiscernible) based.  
22   The Trustee, in that situation, would be very happy.  
23   Unfortunately, in the real world, that's not what secured  
24   lenders (indiscernible) and it's not what the Bankruptcy  
25   Code provides. The Bankruptcy Code requires adequate

1 protection absent an agreement (indiscernible).

2 So, let's talk about the specific language with  
3 respect to Paragraph A and what it provides is that -- let's  
4 start with Paragraph 3. It talks about the individual Note  
5 and the situation as to the amount of that Note subject to  
6 the claims, offsets or affirmative defenses that can be  
7 (indiscernible). And (indiscernible) by the Debtor, by all  
8 the parties, that there are these other things that may  
9 affect the ultimate allowable balance of (indiscernible).  
10 Obviously, if the Trustee here is reserving all the right to  
11 a percentage, all of it. The official language wants to add  
12 in that further, nothing herein shall affect the rights of  
13 the parties and the adversaries as being 33-03263 and 24-  
14 03043, those two adversary proceedings are the ones that  
15 were filed by the Debtors that are new to the case,  
16 challenging or asserting claims against NBK. Defendant 1 is  
17 an adversary proceeding initiated by 2425 WL, LLC, who can  
18 be (indiscernible) NBK claim, and a number of certain claim  
19 of fraud, as well, at that adversary proceeding. First,  
20 Judge, the Trustee would (indiscernible) language in the  
21 abstract. The problem is that NBK doesn't agree to it. And  
22 (indiscernible) apply to Paragraph 3B (indiscernible)  
23 together and Paragraph 3B (indiscernible) same issue as a  
24 related issue that the Debtor, NBK or the Debtor and 2425 WL  
25 want to add language that, subject to the adversary

1 proceeding, NBK has a valid, enforceable, and properly  
2 accepted security issues. Therefore, we want to strike out  
3 that the value of NBK's collateral should be amounted  
4 (indiscernible).

5 Again, for both of those who (indiscernible) these  
6 changes or (indiscernible) the changes, the Trustee didn't  
7 necessarily have a problem with it, other than the fact that  
8 NBK doesn't agree. And there comes the problem, but right  
9 now, there is not a clear path to the pending non-consensual  
10 (indiscernible) of the cash collateral. But given that the  
11 Trustee has needed to establish that NBK is adequately  
12 protected, and I'm not saying that's impossible, but it's  
13 not clear how he could (indiscernible) and tell you. It  
14 would take a lot of work, it would take a lot of expense.  
15 And (indiscernible) just talked to the estate  
16 (indiscernible).

17 The second problem with the -- it's not entirely  
18 clear why this language needs to be in here. Just other --  
19 the way that these provisions are already worded, that is  
20 already clear. Who owns (indiscernible) doesn't agree to  
21 this language (indiscernible) that's the only reason I can  
22 (indiscernible) for it and that the Debtor in 2425 WL that  
23 (indiscernible) to be able to exercise control over  
24 (indiscernible). Other than that, I don't see  
25 (indiscernible). I'd point out, Judge, that NBK has

1 (indiscernible) pointed out in Docket No. 138, pointed out  
2 that, according to Paragraph 6 here, "Although it's true  
3 that the WL adversary proceeding should be dismissed, the  
4 proposed Final Cash Collateral Order does not compel that  
5 result." So, I just don't think that there's a problem  
6 that's being solved by this language. I just don't think  
7 it's an issue.

8 As far as the strike out that's requested, the  
9 problem with indicating collateral not exceeding the amount  
10 that is owed is beneficial to the estate. It means that NBK  
11 isn't earning interest right now. There's not any natural  
12 bridge that we get down to the end of this and I don't see  
13 anything that's -- it's true that there's a collateral worth  
14 \$100 million and NBK has a \$2 million plan that this  
15 Stipulation right here is going to have a material effect.  
16 What it does right now, is make sure that NBK does not get  
17 any interest. This is a good thing for the estate. So that  
18 changes Paragraph 3A. With respect to Paragraph 3E(2), that  
19 one, the Trustee does disagree with and would not agree with  
20 even if NBK would agree. This paragraph is about -- this is  
21 one of the milestone provisions in the Final Cash Collateral  
22 Order and this is the particular month and it's about the  
23 Trustee's requirement to file a Motion (indiscernible) sale  
24 process. (indiscernible) filing such a Motion and the  
25 language they want to add and to say that "provided,



1     however, so long as any of the adversary proceedings are  
2     pending, no auction shall occur." And the Trustee disagrees  
3     with that, (indiscernible) that kind of limitation in  
4     (indiscernible). The Trustee wants to go forward with the  
5     sale and auction process and believes that it's necessary  
6     and believes that it is in the best interests of the estate.

7             And I would point out that the milestone judge  
8     requires the Trustee to file that Motion. (indiscernible)  
9     could object to it. The Debtor in 2425 WL objects. The  
10    Court could deny the Motion for the (indiscernible) and all  
11    of that. And the Court could say he put this language in an  
12    Order about the sale process. They could prove them at that  
13    time. And so, just based on that, this language isn't  
14    appropriate and that's even on top of the fact that NBK  
15    doesn't agree to it and (indiscernible), we're not going to  
16    go forward and say that (indiscernible) very difficult to  
17    (indiscernible). So, to rest my argument, Judge, the  
18    evidence that I want to present would just be that -- about  
19    why -- I guess why (indiscernible) is ultimately necessary  
20    for cash collateral. And (indiscernible), Court rules that  
21    cash collateral and why it's not something to gamble with.

22             THE COURT: All right. Thank you, Mr. Shannon.  
23    Let me go around and -- let me go around and get everyone's  
24    comments on what you just said and then I'll let you  
25    present. Mr. Baker, I'll go to you first.

1 MR. BAKER: Your Honor, I'd like to defer and let  
2 Mr. Rose respond for the parties.

3 THE COURT: Mr. Rose, I'll let you respond for  
4 2425 Owner, LLC and 2425 WL, LLC. Go ahead, sir.

5 MR. ROSE: Your Honor. I believe that -- and I  
6 don't know how this is come to right out and  
7 (indiscernible). The 800-pound gorilla in the room right  
8 now is actually what's in those adversary proceedings. And  
9 that's what we're really talking about here, are third-party  
10 releases. Because this Cash Collateral Order is actually  
11 seeking to take away the rights of these third parties and  
12 to force the third-party claims under the Trustee. And  
13 they're seeking to say that the third parties do not have  
14 the right to control their own claims. And under the law of  
15 this circuit, that's not permitted and that's under Next  
16 Point Advisors, under Pacific Lumber, it's just simply not  
17 permissible. So, we have a violation of the Fifth Circuit  
18 law.

19 Anyway, as we go through what's here today, you're  
20 going to see that it's become very obvious that it's not  
21 necessary in this case. We've seen it before where banks  
22 walk in and say, "If we don't have this, we're not going to  
23 fund." It's simply not true. Banks fund really don't get  
24 provisions in cash collateral orders all the time. Well,  
25 let's go through and see exactly what's in NBK's pleadings

1     that also show it's not there and also let's see why you  
2     need third parties writing these actions because it does  
3     enhance recovery.

4             So, looking at what's here, in Paragraph 4, NBK  
5     responds, Your Honor. They say that his claims are superior  
6     and that only NBK -- I'm sorry, only the Trustee can bring  
7     the claim (indiscernible) adjudication of rights because  
8     Trustee stipulated it. NBK's claims are superior to all  
9     rights except for tax liens and affiliates. I don't believe  
10    that is actually the case. And the Trustee should give any  
11    party allowed to investigate the NBK claims on the exclusive  
12    rights. Why? Because the Trustee doesn't have an ax to  
13    grind and because this will preserve NBK's resources. Where  
14    in the Bankruptcy Code does it say that we're supposed to  
15    preserve the resources of the lender? There's nothing in  
16    the Code that looks to preserve the lender's resources.

17            So, to move on, in Paragraph 8 of your -- we see  
18    the budget that's provided is \$50,000. How is the Trustee  
19    supposed to conduct an investigation and prosecute these  
20    claims on a \$50,000 budget? So, you're taking two adversary  
21    proceedings, removing it from the third parties and handing  
22    it to the Trustee with a \$50,000 budget and claiming they're  
23    going to be effectively prosecuted. Will all due respect,  
24    that's nonsense. What we're looking to do is shut down the  
25    adversary proceedings and make sure they're never

1 prosecuted. That's all that is, is an attempt to make sure  
2 that these things never see the light of day. And that's  
3 what we've come down to. It's also a violation of the Fifth  
4 Circuit law. It's not permissible, it can't be allowed to  
5 go forward. In other cases where third party claims were  
6 allowed to go forward -- I'm not going to look right what's  
7 before the Supreme Court right now. I'm going to go to  
8 Harrington v. Purdue. Not once, but twice, we sold billions  
9 of dollars from (indiscernible) billion dollars and recovery  
10 increased when the third parties rolled out to move into the  
11 position of conserving their claims and forcing the parties  
12 to come to the table. It's precisely for this reason that  
13 third party releases are not permitted. But what this  
14 Circuit (indiscernible) than the other circuits.

15 Your Honor, moreover, where we seek to not allow -  
16 - to forcibly take to not get the third-party releases, are  
17 Paragraphs 6 and 7. NBK tells us that they're going to be  
18 filing Motions dismissed. And they're easily dismissed,  
19 these cases. If that's the case, they're going to be  
20 bringing this before you. They'll dismiss the cases quickly  
21 for you. So, what's the issue? Why should they be worried?  
22 They'll just bring their Motion to Dismiss, they'll present  
23 their evidence to you, the case will be dismissed, and they  
24 should have those concerns. They should be concerned about  
25 anything going forward with the third parties. They

1 shouldn't need this in the Cash Collateral Order.

2           Moving on to the last point I'd like to bring up,  
3 Your Honor, is (indiscernible) and why shouldn't a sale be  
4 permitted to go forward? All real estate (indiscernible).  
5 We're told that. It's one of the first things you learn  
6 when you take property law and (indiscernible). This is  
7 (indiscernible), probably more unique than most. If the  
8 property sold, it can never be replaced. For that reason,  
9 we need to hold up the sale until the adversaries are  
10 complete. Your Honor can enter a Scheduling Order. It can  
11 move forward with expedited discovery. We can move these  
12 things forward. The Bankruptcy Courts are known for a  
13 rocket docket. We're willing to agree to move forward on  
14 that basis. We're willing to put this in your hands and to  
15 go forward on that basis. If NBK is going to do that, we  
16 can make it happen fast. So, we're looking to you to do  
17 this. They're telling us they can get it dismissed quickly  
18 by going before Your Honor and having that done. So, we're  
19 taking this Order, we're proposing these provisions and  
20 we're hoping to put this all before you. We don't think  
21 there should be an issue about it.

22           But currently, NBK has a lot of issues with it.  
23 Your Honor, the law doesn't permit third party releases.  
24 That's what this Order is asking for. It's not permitted  
25 under the law of this circuit. They shouldn't be allowed to

1 give this guy third party releases to the Cash Collateral  
2 Order. We're not going to be presenting any -- we're not  
3 going to be putting witnesses on, we're not going to be  
4 presenting any evidence. We believe this is a legal  
5 argument based on the law of this circuit. We've got the  
6 law in our pleadings and that's the (indiscernible).

7 THE COURT: All right. Thank you, sir. Ms.  
8 Andresen, I'll go to you even though -- I assume that you  
9 don't have any objection or anything to say?

10 MS. ANDRESEN: That's right, Your Honor. I have  
11 no comments. Thank you.

12 THE COURT: Mr. Fitzmaurice, I think that you  
13 probably have a lot to say. So, I'll turn to you.

14 MR. FITZMAURICE: Thank you, Your Honor. With  
15 respect to the last portion of the argument and the idea  
16 that the provisions in Paragraphs 3A or 3B or 3B(2) include  
17 releases of third party claims against the bank, I don't  
18 know how else to say this, but directly, they just don't.  
19 It's just not there. The objectors are objecting to  
20 provisions that don't exist. I don't, frankly, understand  
21 what they're talking about. These provisions aren't fair.  
22 The paragraphs preserve claims. They preserve claims the  
23 estate has. Any separate claims that are brought in  
24 separate adversary proceedings will be dealt with there.  
25 They don't belong here in the Cash Collateral Order. To be

1 fair, those claims have absolutely no merit. But they'll be  
2 dealt with in those cases if it's appropriate and there are  
3 no -- there is no tenants in this Cash Collateral Order to  
4 give NBK releases of third-party claims.

5 What there is, is a very standard, usual procedure  
6 where the Trustee, sometimes it's the Debtor, has a period  
7 of time to investigate and challenge the secured creditors'  
8 liens. The Trustee can, as the only party who is authorized  
9 to act on behalf of the estate can bring that action and can  
10 file this challenge or it can be -- or he can conclude that  
11 the liens are valid, the claim is valid, the amount of the  
12 debt is what it is. That's the Trustee's job. We have  
13 faith and confidence in the process and the independence  
14 that the Trustee has in this case. That's the way that we  
15 think we should proceed. The parties have with the parties,  
16 being the Trustee on the one hand and the bank on the other,  
17 have agreed to that challenge process that's embodied here  
18 in the Order. That's a very, as I said, a very standard,  
19 reasonable, normal provision in bankruptcy cases. And  
20 again, just to repeat myself, there is no effort here to  
21 impact claims that third parties have.

22 Just briefly addressing the strike out language in  
23 3B, first of all, I agree with what Mr. Shannon said with  
24 respect to the fact that the (indiscernible). I also wanted  
25 to point out that Debtor's schedules include a value of the

1 collateral of \$18.6 million. The debt is well in excess of  
2 that, multiple of that. And with respect to the provisions  
3 in 3E(2), if there are objections to the Motion that has not  
4 yet been filed, but that will be filed shortly, they should  
5 be made in the context of that Motion. They don't belong  
6 here. They don't belong as part of the Cash Collateral  
7 Order. And to be clear, NBK does consent to the Trustee's  
8 use of its cash collateral, but only on the terms that are  
9 provided in the Order and subject to the arguments made here  
10 today, that the provisions and the additions in 3A, 3B, and  
11 3B(2) should be removed and the strike out in 3B should be  
12 restored. And subject to that happening, NBK consents to  
13 the Trustee's use to the cash collateral and otherwise, it  
14 does not.

15 THE COURT: All right. Thank you, sir. Let me  
16 turn now to Mr. MacNaughton. Mr. MacNaughton, do you have  
17 anything you want to tell me?

18 MR. MACNAUGHTON: (indiscernible) make this brief.  
19 My client supports the Trustee in moving this case forward.  
20 The concern that my client has is that he has been waiting  
21 since before the first bankruptcy to try (indiscernible)  
22 solid landlord who will be there for them with regard to  
23 leasehold issues that are existing and have been existing  
24 since that time. In that regard, we'd like, at this point,  
25 the Trustee to have his cash and be able to do whatever it



1 wants to do like the adversary resolved and we'd like no  
2 further adversary to delay the process. Other than that, we  
3 have no comments.

4 THE COURT: All right. Thank you, Mr.  
5 MacNaughton. All right, Mr. Shannon, any other evidence you  
6 might have now?

7 MR. SHANNON: Thank you, Your Honor. Just for the  
8 purpose of this hearing, I'd like to move for the admission  
9 of exhibits as Docket 171-1 through 171-15 and exhibits 171-  
10 18. That's it. I'm sorry. Just 171-1 through 15 and 171-  
11 18.

12 THE COURT: All right. Let me go on the floor and  
13 see if we have any objections to the admission of 171-1  
14 through 171-15 and 171-18. Mr. Baker?

15 MR. BAKER: I'm looking back at those right now.  
16 Well, Your Honor, there are concerns with certain of the  
17 documents because the documents were actually executed by  
18 another party that has subsequently demonstrated concerns  
19 and issues with the party executing. That's part of what's  
20 in the adversary proceeding. And so, we don't want to agree  
21 to the addition of these documents at this point and time in  
22 light of --

23 THE COURT: Okay. So, Mr. Baker, let me just cut  
24 you off. So, you object to the admission of all of the  
25 documents. Is that correct?

1 MR. BAKER: No, we don't object to the admission  
2 of -- the ones that we have a concern with are 6, 7, 8, 9  
3 and then 18.

4 THE COURT: All right. Mr. Rose, do you have any  
5 objection other than those raised by Mr. Baker?

6 MR. ROSE: I have no other objections, Your Honor.

7 THE COURT: All right. Ms. Andresen, do you have  
8 any objections other than those raised by Mr. Baker?

9 MS. ANDRESEN: No, Your Honor. I have no  
10 (indiscernible) comments. To help save time, if the Court  
11 will permit, I'll (indiscernible) camera off and just try to  
12 (indiscernible).

13 THE COURT: Sure. That's fine. I'll take you  
14 (indiscernible). Thank you. All right. Mr. Fitzmaurice,  
15 do you have any objections to -- other than the ones raised  
16 by Mr. Baker?

17 MR. FITZMAURICE: No, Your Honor. No objections.

18 THE COURT: Mr. MacNaughton?

19 MR. MACNAUGHTON: No, Your Honor. No objection.  
20 And I'd like the opportunity to also have my camera off  
21 (indiscernible) the rest of this hearing.

22 THE COURT: That's fine and (indiscernible).  
23 Thank you, sir. All right. Then I will, based on the  
24 objection by Mr. Baker, not admit 6, 7, 8, 9 or 18, but I  
25 will do 171-1 through 5 and then 10 through 16. Those are

1 admitted. Mr. Shannon, you may proceed.

2 MR. SHANNON: Thank you, Your Honor. I'd like to  
3 call Mr. Chris Murray, the Chapter 11 Trustee.

4 THE COURT: Mr. Murray, can you raise your right  
5 hand to be sworn? Do you swear or affirm to tell the truth,  
6 the whole truth and nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE COURT: All right. Thank you. Go ahead, Mr.  
9 Shannon.

10 MR. SHANNON: And Your Honor, I'd like to share  
11 the screen.

12 EXAMINATION OF CHRISTOPHER MURRAY

13 BY MR. SHANNON:

14 Q And for -- Mr. Murray -- I'm sorry, Mr. -- can you say  
15 your name for the record?

16 A Yeah, Christopher Murray.

17 Q And what is your role in this case?

18 A I'm the Chapter 11 Trustee.

19 Q Okay, and can you see the document that I'm hopefully  
20 sharing on my screen?

21 A Yes.

22 Q Okay. I'm going to scroll through this document and  
23 ask you a few -- if you recognize what this document is.

24 A Yeah, I recognize this.

25 Q Okay, and go to --

1       A       This is our revised, proposed Final Cash Collateral  
2       Order with the changes from the prior version highlighted  
3       and redlined.

4       Q       Thank you. And were those changes that you just  
5       referenced negotiated?

6       A       Yes.

7       Q       And how would you describe the negotiations that led to  
8       those changes?

9       A       There were multiple discussions, primarily with NBK,  
10      but also some interaction with the Debtor on language that  
11      the parties wanted.

12      Q       Okay, and am I correct that you wanted for the Court to  
13      enter the Order after the hearing today?

14      A       Yes.

15      Q       Why do you want this revised, proposed Cash Collateral  
16      Order entered?

17      A       These are the best terms I was able to negotiate with  
18      the bank. I obviously need cash to continue operating the  
19      estate and it's in the estate's best interest to have access  
20      to this cash to continue to meet the expenses of the  
21      building and the case.

22      Q       And has -- when you say, "the bank", you mean the  
23      National Bank of Kuwait, correct?

24      A       I do.

25      Q       Okay, and has the bank agreed to any other language

1     that what's in this redline?

2     A     No.

3     Q     And did, to your knowledge -- were there any attempts  
4     to ask the bank if they would agree to additional language  
5     besides this?

6     A     Yes.

7     Q     Okay. Mr. Murray, I'm going to ask you, are you aware  
8     of any tax liens against the property at 2425 West Loop?

9     A     Yes.

10    Q     And do you know if those documents -- I'm sorry. Do  
11    you know if those tax liens are accruing interest?

12    A     Yes, they are.

13    Q     And was it your understanding that those tax liens  
14    would come ahead of any relief and any (indiscernible)?

15    A     Yes.

16    Q     Okay. Do you have any reason to believe that the value  
17    of the property is increasing in proportion to that accrued  
18    interest?

19    A     I don't know. No, I don't know.

20    Q     Okay. Now, did you or (indiscernible) non-consensual  
21    (indiscernible) cash collateral? Do you believe that would  
22    be a difficult fight?

23    A     Yes, probably mountable. That it would be very  
24    difficult.

25    Q     Okay, and for them to receive co-op's money to the

1 estate?

2 A Yes, of course.

3 Q Do you have any committed funding from any parties to  
4 undertake that fight?

5 A No.

6 Q Okay. Mr. Murray, I kind of want to switch gears here  
7 a little bit. I had you -- without going into any  
8 privileged information, have you started an investigation  
9 into the claims against the National Bank of Kuwait?

10 A Yes.

11 Q And is that investigation -- or let me rephrase that.  
12 If you determine, as a result of that investigation, that  
13 there are valid claims against National Bank of Kuwait, what  
14 do you intend to do about that, about that determination?

15 A It depends on what the determination is. But if there  
16 is valuable claims or offsets or claims (indiscernible)  
17 subordination. If those have merit, I'll evaluate at that  
18 time and pursue them. But I likely would if that's how the  
19 estate (indiscernible).

20 Q Thank you, Mr. Murray.

21 MR. SHANNON: Judge, no further questions.

22 THE COURT: Yeah, Mr. Baker?

23 CROSS-EXAMINATION OF CHRISTOPHER MURRAY

24 BY MR. BAKER:

25 Q Mr. Murray, there have been offers from 2425 WL and Mr.

1 Choudhri actually helped fund this, have they not?

2 A Yes.

3 Q And would you be prepared to accept funding from them  
4 on the same terms and conditions as you (indiscernible) for  
5 NBK with regard to priorities and liens?

6 A I don't -- I'm not sure how to answer that. You mean,  
7 if your client were the senior secured creditor and offered  
8 the same terms as NBK? I suppose, sure. I don't care if  
9 the party is on the other side.

10 Q Okay. So, is there -- have you sought out other  
11 sources of funding at this point in time?

12 A No. Yes, for your client.

13 Q And anyone else?

14 A No.

15 Q So, you've not made any requests to do any other type  
16 of DIP lending other than what has been done in the case of  
17 NBK and 2425 WL?

18 A Right. I have not.

19 Q Okay. You've not used cash collateral through the end  
20 of April, correct?

21 A Yes.

22 Q And so, there is not any, as of today or tomorrow,  
23 actually up until the last week of April, for any additional  
24 approval of cash collateral, is there?

25 A I don't -- I'm not sure I follow what you're asking.

1 I'm sorry.

2 Q Well, you've got the form right now under the  
3 (indiscernible) that used cash collateral through the end of  
4 April, correct?

5 THE COURT: Mr. Baker, I'm going to interrupt you  
6 for just a minute. For some reason, I disconnected  
7 (indiscernible). I disconnected from the call about a  
8 minute and a half ago. So, the last thing I heard from Mr.  
9 Murray was that he hadn't paid any other or had any other  
10 sources of financing past your client. So, you need to go  
11 back and ask those questions all over again because I did  
12 not hear them.

13 MR. BAKER: Okay. I'm sorry. Let me think.

14 THE COURT: And I apologize. For some reason, I  
15 just dropped out of the conference call.

16 MR. BAKER: Okay. Well, let me go back.

17 BY MR. BAKER:

18 Q If 2425 WL were to provide funding, would it be with  
19 the same type of conditions as in the current order for NBK?

20 A It would depend on what the offer is. I -- this is too  
21 abstract for me to respond to.

22 Q Okay. So, right now, as you sit today, you have the  
23 ability to use cash collateral through the last week of  
24 April, correct?

25 A Yes.



1 Q Okay. So, there's not an immediate need today, as we  
2 sit here, or next week, to have to have a cash collateral  
3 usage, is there?

4 A No, there is a need.

5 Q There is a need? Even though you've got approval to  
6 spend through the end of April?

7 A Is that a question?

8 Q Yes, that's a question.

9 A Today was the final hearing on cash collateral. If I  
10 don't get an Order, the authority expires.

11 Q Okay, so if it's continued or if there's a subsequent  
12 hearing and you have cash collateral that you could use for  
13 another several weeks, there is not an immediate danger to  
14 the Trustee, is there?

15 A I suppose if there's another source of authority to use  
16 cash collateral, sure. In that hypothetical situation, yes.

17 Q Okay. If they were continued, are you willing to  
18 negotiate with 2425 WL to get a condition for this cash  
19 collateral?

20 A A condition for the use of cash collateral?

21 Q Or --

22 A I don't understand your question because you're talking  
23 about cash collateral that doesn't belong to your client.

24 Q Well, okay. Let me rephrase that. I'm sorry. Are you  
25 willing, if this hearing is continued, the final hearing, to

1 negotiate to obtain cash for the Debtor to use for the  
2 operations?

3 A I have been and remain willing to do that and I'm still  
4 waiting for your client's response to my last counter to the  
5 proposal (indiscernible). I've been waiting for weeks.

6 Q Well, your last proposal is a different proposal than  
7 what you've agreed to with NBK. You agree to that, correct?

8 A It's a different party with different parties. Of  
9 course it's different.

10 Q Well, why did -- okay. You would be open to a new loan  
11 from -- that's made available to the Debtor at this point in  
12 time. Wouldn't you? I would presume you would be.

13 A I said that to you in answer to your client before,  
14 yes.

15 Q Okay.

16 MR. BAKER: No further questions at this time,  
17 Your Honor.

18 THE COURT: Mr. Rose, do you have any questions?

19 MR. ROSE: Yes.

20 CROSS-EXAMINATION OF CHRISTOPHER MURRAY

21 BY MR. ROSE:

22 Q Mr. Murray, you're (indiscernible) Chapter 11 Trustee,  
23 correct?

24 A Yes.

25 Q You spoke about having -- before we started your

1 investigation with NBK? I think --

2 A Yes.

3 Q You used counsel to do that investigation?

4 A Yes.

5 Q Using counsel and looking at a \$50,000 budget, can you  
6 tell me, if you have to start prosecuting claims, do you  
7 believe that you can go very far on a \$50,000 budget?

8 A You have a couple of questions embedded in there.

9 Q So, okay --

10 A Could you re-ask it?

11 Q Okay, I'll re-ask it. Looking at -- let's start with  
12 the investigation, assume that there is an investigation to  
13 be done into your loan to look at a complex banking  
14 relationship that's gone on over many years in a situation  
15 such as this. (indiscernible) do that type of  
16 investigation, how much of a budget would you normally  
17 allocate towards that?

18 A It depends completely on the case and the resources of  
19 the case. I've done it with zero dollars. I've done it  
20 with more than \$50,000.

21 Q Okay, and when you get into a prosecution situation?

22 A Prosecution? If you mean pursuing the claims, what's  
23 the question there?

24 Q Does that generally run into hundreds of thousands of  
25 dollars as a rule?

1       A       It completely depends on the case and the claims in the  
2       situation. Sometimes it's zero. (indiscernible) counsel.

3       Q       Okay. When the opposing party is providing cash  
4       collateral and a short timeline, such as 90 days, to not  
5       only do an investigation, but also to sell property to a  
6       small group, does that put pressure on the team to achieve  
7       all of these goals within that time period?

8               MR. SHANNON: I'm going to -- Judge, I'm going to  
9       object to the relevance of that question.

10              THE COURT: I'll overrule the objection. I'll  
11       allow the question. Go ahead, Mr. Rose.

12       BY ROSE:

13       Q       Mr. Murray, (indiscernible) Mr. Murray, if you heard  
14       the question, otherwise -- you can answer, otherwise, I'll  
15       rephrase.

16       A       Yeah, I can try. I'm not sure I agree with your  
17       characterization, but as a general member I would agree  
18       that, if there's less money to investigate, that puts  
19       pressure. If there's less time to investigate, that puts  
20       pressure. In the abstract, yes, that's true. And I would  
21       always like more time and more money, if I can get it.

22       Q       And in the current situation, it seems like you are on  
23       a tight timeframe with limited funds. I think we'd both  
24       agree with that.

25       A       There is a time limit and there's a limit on the funds.

1 I don't -- if you're suggesting that I think it's inadequate  
2 to conduct an investigation, I disagree with that.

3 Q Okay. I think we'll agree to disagree. Okay. Well,  
4 thank you, Mr. Murray.

5 THE COURT: Mr. Fitzmaurice?

6 MR. FITZMAURICE: Thank you, Your Honor.

7 CROSS-EXAMINATION OF CHRISTOPHER MURRAY

8 BY MR. FITZMAURICE:

9 Q Mr. Murray, as you sit here today, is there a credible  
10 source of financing for the estate other than through the  
11 use (indiscernible) cash collateral?

12 A No.

13 Q Thank you.

14 MR. FITZMAURICE: Nothing further, Your Honor.

15 THE COURT: All right. Thank you. Let me go back  
16 to Mr. Shannon.

17 MR. SHANNON: No further questions, Your Honor.

18 THE COURT: All right. Thank you. Thank you, Mr.  
19 Murray. You are excused. All right. Mr. Shannon, do you  
20 want to call on either witness? I'm assuming not, but I  
21 want to give you the opportunity.

22 MR. SHANNON: No, Your Honor. That's our case.  
23 Thank you.

24 THE COURT: All right. Thank you. Mr. Baker, Mr.  
25 Rose indicated that you weren't going to call witnesses, but

1 perhaps you have a different view. Do you have a witness  
2 you want to call?

3 MR. BAKER: No, Your Honor.

4 THE COURT: All right. Mr. Fitzmaurice, I'm  
5 assuming you have no witnesses, correct?

6 MR. FITZMAURICE: Correct, Your Honor.

7 THE COURT: All right. Mr. Shannon, I'll let you  
8 go ahead and argue now. I think everyone has rested and we  
9 can go from there and I'll go around the horn.

10 MR. SHANNON: Thank you, Your Honor. So, as Mr.  
11 Murray testified, the (indiscernible) cash collateral is  
12 necessary in this case (indiscernible) is also warranted and  
13 necessary. There are past liens and, as Mr. Murray  
14 testified, exist in our -- admitted exhibits are  
15 (indiscernible) out of the admitted exhibits, we have  
16 (indiscernible) claims, 171-11 which approves the claim of  
17 the City of Houston, 171-12 is Houston Independent School  
18 District, 171-13 is the Houston Community College, 171-14 is  
19 by Harris County and related taxing authorities. Ultimately  
20 non-consensual use of cash collateral would be a very  
21 difficult road. As we heard Mr. Murray say, it might be a  
22 problem. And because of that, the indicated the agreement  
23 that ultimately required (indiscernible) the Debtor or 2425  
24 WL indicated the idea that they were -- they suggested the  
25 idea of it being DIP lending from a Mr. Choudhri related

1     entity or something like that.

2             You've heard Mr. Murray say that there is no -- he  
3     answered no to the question, is there another offer that's  
4     on the table. So, ultimately indicated agreement to  
5     disclose here. Of course, given these orders of cash  
6     collateral to preserve would be a date. It is -- that's  
7     something to consider with respect to these proposed  
8     changes. Again, I haven't heard anything really  
9     (indiscernible) again about why these proposed changes are  
10    necessary, what they protect. The idea that this is a  
11    third-party release is -- I don't know how to respond to  
12    that. I mean, the Harrington/Purdue case, I -- it's not.  
13    There's no releases being given. No one is being required  
14    to give up any releases indicating agreement that the cash -  
15    - (indiscernible) itself where it does not require the  
16    dismissal of 2425 WL's adversary proceedings for equitables  
17    for admission. (indiscernible) not any issue  
18    (indiscernible) in the adversary proceedings.

19            With respect to the value of indicated collateral  
20    does not exceed the amount owed and incurred, Mr.  
21    Fitzmaurice referenced in his opening, and it is in evidence  
22    the Debtor's schedules based on the property at -- I'm  
23    sorry, I'm (indiscernible). Based on what the property and  
24    I believe it was \$17.5 million, and there has been other  
25    numbers thrown out, about \$16 or \$18.6 million. That's what

1 the Debtor is claiming. That's what's included in their  
2 Disclosure Statement, which is 171-5. (indiscernible) and  
3 it is submitted as a statement of the Debtor. So, as far as  
4 the loophole of the strike out that's in Paragraph 3B,  
5 (indiscernible) to support the value of NBK's collateral  
6 does not exceed the amount. So, it benefits the estate  
7 (indiscernible).

8 With respect to Paragraph 3B(2), that's the change  
9 where the Debtor and 2425 basically want to prevent the  
10 sale, they want to block the Trustee from being able to hold  
11 an auction and go forward with the sale until the adversary  
12 proceeding, while the adversary proceedings are pending. I  
13 haven't heard -- (indiscernible) argument like that is  
14 appropriate. The property is unique, okay. That could be  
15 the case. The right way to be able to kind of object to  
16 either bidding procedures or a Final Sale Order. It's not a  
17 reason to prevent the Trustee from being able to use cash  
18 collateral.

19 I think that's (indiscernible), Judge. So -- but  
20 I do think -- and the evidence supports that idea that the  
21 proposed Cash Collateral Order by the Trustee at 172-2  
22 should be entered. I think it's in the best interest of the  
23 estate and there is a thousand reasons to go forward with  
24 that language instead of the language that is proposed by  
25 the Debtor in 2425 WL. Thank you, Your Honor. That's all I



1 have.

2 THE COURT: Thank you, Mr. Shannon. Mr. Baker?

3 MR. BAKER: Your Honor, I find it most interesting  
4 that Mr. Murray did not seek out any other source of funding  
5 other than NBK. He effectively admitted that he sought no  
6 other source of -- he did DIP financing. He sought the DIP  
7 financing from NBK and now has agreed to all their terms  
8 without any other places to look. That's troubling,  
9 especially in light of what NBK is demanding for this. Now,  
10 when you look at the inserts in Paragraph 3A, the whole idea  
11 is to preserve the status quo and it's our contention that  
12 by not putting that in there, that there is an argument that  
13 the adversary proceedings may not go forward and we're not  
14 sure what the idea is. But there's not a real reason not to  
15 include those in there because, to the extent that it's left  
16 out, the argument is that you are affecting third party  
17 releases, and that is true for Paragraph 3A and 3B. The  
18 strike out, Your Honor, the only evidence (indiscernible) is  
19 the Debtor's valuation in the schedules. There is no  
20 evidence. And so, this Court is making the determination on  
21 a claim and also on value with the only evidence being what  
22 the Debtor has in its schedules. That's not appropriate.

23 With regard to 3B(2), we believe that there should  
24 be some of the issues with regard to the milestones and the  
25 adversary proceedings that can be argued later on and it can

1 be addressed later on. Your Honor, we would suggest that,  
2 in light of the fact that there's cash collateral usage, it  
3 goes on for at least another two to three weeks right now,  
4 and it's already been approved, that the Trustee be required  
5 to go to the other sources of financing, including potential  
6 sources from the Debtor. And allow the Debtor to have the  
7 same type of liens and remedies and issues if it provides  
8 new loans as NBK did. The value (indiscernible)  
9 differentiate between them other than the fact that -- well,  
10 there's not. There's not. And so, it would be our  
11 contention, Your Honor, or request, that this Order not be  
12 approved unless you put the provisions in that we have  
13 requested that the Trustee be required to go to seek some  
14 other sources and continue this for at least another two  
15 weeks.

16 THE COURT: Mr. Baker? Mr. Rose?

17 MR. ROSE: Your Honor, plain and simple,  
18 throughout the papers, we see a claim that the adversary  
19 proceedings should be put under the Trustee. They should be  
20 divested from the current parties and placed under the  
21 control of the Trustee. This is a third-party release.  
22 This is not a consensual third-party release. It's not  
23 permitted in the circuit. I don't know what other argument  
24 there has to be. That's impermissible. That's not allowed.  
25 That's why the language that we're asking for has to be

1 inserted into this Order, and that's what (indiscernible).  
2 That being the case, the adversary should be allowed to be  
3 continued. You should be overseeing the adversary so the  
4 adversary can move quickly (indiscernible) NBK with the  
5 protection it's asking for and the solution is simple. It's  
6 right before you if this Cash Collateral Order is entered.  
7 I agree with Mr. Baker, the easier solution is to allow the  
8 Debtor to go into alternative financing. But if  
9 (indiscernible) is the answer, (indiscernible) is here by  
10 the solution.

11 THE COURT: Thank you, Mr. Rose. All right.  
12 Thank you. Mr. Fitzmaurice, let me go to you. I think I  
13 know what you're going to tell me but go ahead.

14 MR. FITZMAURICE: Thank you, Your Honor. So, the  
15 bank agrees to the Trustee's use of cash collateral on the  
16 terms that are in the proposal or as we discussed and only  
17 on those terms. You heard the Trustee testify that there is  
18 no credible alternative financing proposal that's on the  
19 table right now. Your Honor may recall that in appointing  
20 the Trustee, Your Honor, I'll say colloquially, gave Mr.  
21 Choudhri (indiscernible) an opportunity to put his money  
22 where his mouth was. Your Honor may recall there was a  
23 final DIP proposal that Mr. Choudhri was trying to make back  
24 then a month ago and Your Honor said, "I'll give you the  
25 opportunity to go ahead and do that." Here we are, several

1 months later, nothing has been done. No credible proposal  
2 has been made. Instead, it's, "Oh, well, give us some more  
3 time and we'll do it in the future." The Debtor's conduct,  
4 Mr. Choudhri's conduct, the second lien lender, which is  
5 also Mr. Choudhri, (indiscernible) here that the purpose is  
6 to delay, to frustrate, for no other purpose. That's what's  
7 happening here, and Your Honor should not allow it.

8           There are no provisions in the Cash Collateral  
9 Order that effectuate a third-party release. I don't  
10 understand what the Debtor and 2425 WL are talking about.  
11 Those provisions just literally don't exist. The adversary  
12 proceedings assert the same claims. Those claims will be  
13 dealt with in the ordinary course in those cases. It has --  
14 they have no bearing and should have no involvement with  
15 respect to the proposed Cash Collateral Order that is right  
16 in front of Your Honor. This issue between the Debtor and  
17 National Bank of Kuwait has been going on a for a long time,  
18 for far too long. There has been a long, long, long list of  
19 litigations that have been filed over and over and over  
20 again asserting the same claims. We're at a point now where  
21 this matter may finally be brought to a resolution and what  
22 the Debtor is trying to do, what Mr. Choudhri and his  
23 affiliate entities are trying to do is to go in and  
24 frustrate that. There's no basis for it. Thank you, Your  
25 Honor.

1                   THE COURT: Thank you. All right, Mr. Shannon,  
2     I'll let you close.

3                   MR. SHANNON: Thank you, Your Honor. I just want  
4     to address a few points and I won't take too much time.  
5     Relative in the order that they were brought up. The first  
6     thing that the Debtor in 2425 projected was that the Trustee  
7     just agrees to all of NBK's terms. That's not what Mr.  
8     Murray testified earlier. He testified that he negotiated  
9     with NBK, that he tried to get the language (indiscernible)  
10    some of the language that was requested by the Debtor in  
11    2425 agreed to by NBK. That's what the (indiscernible).  
12    That's the evidence that's in front of you. I just want to  
13    point out that the idea that the Debtor's adversary  
14    proceeding can be prosecuted or pursued by the Debtor at  
15    this point is very clearly wrong. The Debtor can't --  
16    that's estate property and the Trustee is in control of that  
17    adversary proceeding. That is an estate claim. It's very  
18    clear. There's not even any (indiscernible).

19                  Also, Judge, one other thing that was brought up  
20    is that there was no reason to enter this Order. You heard  
21    the reason. I heard what Mr. Murray said. You've heard the  
22    argument. (indiscernible) this Order and why the Trustee  
23    believes it should be entered and why it's in the best  
24    interests of the estate. (indiscernible) the idea that the  
25    Chapter 11 Trustee is required to do something that he

1 doesn't think is a good idea because the Debtor thinks that  
2 it would be, (indiscernible) why that should be the case. I  
3 mean, the Trustee does not have an actual proposal in front  
4 of him that he could ask for one today or any time in the  
5 future. And (indiscernible) to try to go and get post-  
6 petition financing rather than use this cash collateral and  
7 again, doesn't get third party releases. It does not  
8 provide NBK (indiscernible) other than (indiscernible) for  
9 its cash that it is being diminished.

10 All in all, Judge, the proposed Order at Docket  
11 172-2 should be entered. And the other two, with respect to  
12 whether the sale happened or whether the auction can happen  
13 if the adversary proceedings are still going on, those can  
14 be addressed in that Motion, in the (indiscernible) Motion.  
15 And the issues about the adversary proceedings can be dealt  
16 with in those adversary proceedings. What we're here on  
17 today is this Order and it should be entered, Your Honor.  
18 Thank you.

19 THE COURT: All right. Thank you. All right.  
20 So, let me go and make the following comments finding on the  
21 record, and then you can expect that I'll enter an Order  
22 probably in the next hour or two after I go back and review  
23 both the adversary proceedings and that's 23-3263 and 24-  
24 3043. But let me make the first comment that this a  
25 consensual Order and I'm not sure that given the fact that

1 it is a consensual Order and that the National Bank of  
2 Kuwait doesn't want to agree to any of your terms, I'm not  
3 sure that I have the right to amend that Order as the  
4 parties are seeking. I'll also make a finding that if I  
5 don't enter an Order today, the Debtor has no access to cash  
6 and I'm not sure what the alternative is. I could send the  
7 Debtor back to Square One and try and get a non-consensual  
8 Order for use of cash collateral. But if I believe Mr.  
9 Murray and I do, that that probably would be near to  
10 impossible that leaves the Debtor unable to operate because  
11 it has no cash, and likely, the case gets converted to a  
12 Chapter 7, which is not what I think anybody wants.

13 And Mr. Baker's allegations that the Debtor should  
14 somehow obtain DIP financing, there's no evidence before the  
15 Court that the Debtor could even obtain DIP financing given  
16 the value of the debt to National Bank of Kuwait and the  
17 value in the Debtor's schedules, which (indiscernible). I  
18 don't see any way that the Debtor could potentially get DIP  
19 financial from anyone. All right.

20 I think the most interesting part of the proposed  
21 changes to the Order which are in 182 as to 3E(ii), I would  
22 say that this Court would never sign off on any sort of  
23 Order that contains any sort of impediment to any party  
24 filing a 353 Motion, the course hearing the 353 Motion,  
25 would not rule on any objections to a 353 Motion or

1 basically ruling on that Motion. So, I think that, quite  
2 clearly, the language in 3E(ii) is basically not something  
3 that I would ever put in an Order or require. So, even if I  
4 find out (indiscernible) Order, I would not add that  
5 language without reason.

6 I don't think that the argument about three party  
7 releases makes any sense to me. I don't see anything in the  
8 Order, as it's currently written, that's basically linked to  
9 their third-party releases, but I can't say for certain that  
10 that's the case. But I'm going to go back and review the  
11 Order one more time and review the adversary proceedings.  
12 But I think, as Mr. Shannon and Mr. Murray have basically  
13 talked about, I don't think that there is any third-party  
14 release to be concerned about and whether (indiscernible)  
15 overrule that objection, but I want to make sure and I want  
16 to spend some time again reviewing the Order and the  
17 adversary proceedings.

18 So, that's my ruling on the record. You can  
19 expect an Order. If I want to make additional findings of  
20 fact or conclusions of law, I'll make them by separate  
21 findings, other than the Order that I sign. But I think  
22 that that does what we need to do today. I appreciate  
23 everyone's time and attention and everyone appearing by  
24 video, and with that, we are adjourned. Thank you so much.

25 (Proceedings adjourned at 10:17 a.m.)



CERTIFICATION

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I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the  
above-entitled matter.

A handwritten signature in black ink that reads "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: April 12, 2024